



Improving the Five-Year Review Process at DoD Installations

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Overview

- Purpose of the Five-Year Review
- The Five-Year Review Requirement
- Legal Interpretations
- Drivers
- Actions Taken
- Recommendations
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The Five-Year Review Requirement

- National Contingency Plan (NCP) (40 CFR 300.430(f)(4)(ii)):
 - If a remedial action results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure (UU/UE) such remedial action shall be reviewed no less often than every five years after initiation of the selected remedial action.
- Defense Environmental Restoration Program Guidance (September 2001) promulgated this requirement within the Department.
- Office of Solid Waste and Emergency Response Directive 9355.7-03B, "Comprehensive Five-Year Review Guidance," June 2001.



Purpose of the Five-Year Review

- The objective of the FYR is to determine whether the selected remedy remains protective of human health and the environment.
- In making this determination, the following questions are to be addressed:
 - Is the remedy functioning as intended by the decision document?
 - Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of remedy selection still valid?
 - Has any other information come to light that could call into question the protectiveness of the remedy?



Legal Interpretations

- DoD and EPA agree on the following legal interpretations of CERCLA and the NCP:
 - FYRs are statutorily required when a remedial action does not allow for “unlimited use and unrestricted exposure” (i.e. when waste is left in the ground).
 - Applies to NPL and non-NPL sites being addressed under CERCLA 121(c).
 - A FYR shall occur no less than five years after initiation of the remedy.
 - Applies at remedial actions that require more than 5 years to complete.
 - If the FYR review determines that additional remedial action is necessary, it shall be taken.
 - An annual report will be provided to Congress listing the results of such reviews and any actions taken.



DoD/EPA Policy Divergence

DoD	EPA
<ul style="list-style-type: none">• Applies to RODs signed on or after October 17, 1986	<ul style="list-style-type: none">• Applies to remedial actions taken prior to October 17, 1986
<ul style="list-style-type: none">• DoD signature completes FYR	<ul style="list-style-type: none">• EPA signature completes FYR
<ul style="list-style-type: none">• Subsequent FYRs due 5 years from DoD signature	<ul style="list-style-type: none">• Subsequent FYRs due 5 years from EPA's concurrence
<ul style="list-style-type: none">• DoD submits FYR to regulators for informational purposes	<ul style="list-style-type: none">• EPA has a concurrence role in FYR
<ul style="list-style-type: none">• Removal actions do not require FYRs	<ul style="list-style-type: none">• Removal-only actions leaving hazardous substances, pollutants, or contaminants on site above levels that allow for UU/UE require FYR
<ul style="list-style-type: none">• No penalties, unless specified in an FFA	<ul style="list-style-type: none">• EPA has enforcement authority



Circumstances Driving The Issue

- In FY2010 DUSD(I&E) Environmental Directorate conducted a Cleanup Management Review which concluded that significant issues have emerged since 2001 regarding additional requirements and considerations for FYRs. Issues included:
 - Emerging contaminants
 - Vapor intrusion
 - Consistent execution of this requirement across the DoD Components.



Circumstances Driving The Issue (cont)

- A June 2010 EPA Inspector General Report identified the following issues associated with EPA's FYR policy and procedures.
 - EPA lacks a management control for monitoring the progress and completion of FYR recommendations
 - EPA lacks a management control to ensure EPA's concurrence letters are timely, consistent, and transparent.
 - Significant inconsistencies between issues and recommendations in the FYR submitted by the federal facility and the data entered into CERCLIS affect EPA's ability to monitor the completion of recommendations that address site protectiveness.
- As a result of this Report EPA is reviewing and revising their FYR policy and procedures.



DoD Actions Taken

- DoD FYR Subcommittee
 - Established a Subcommittee under the DoD Cleanup Committee comprised of DoD Components' program and legal representatives.
 - Meetings serve as forum to discuss policies, procedures, and issues, propose policy options, and come to consensus on policies and procedures.
- Meetings with EPA
 - Several meetings with EPA's Federal Facilities Restoration and Reuse Office (FFRRO) to discuss viewpoints, identify critical issues, and propose compromises.
- Sent letter to FFRRO with policy and procedural recommendations for consideration.



DoD Initial Recommendations

- Standardize the review submission process
 - Develop a standard cover letter outlining the coordination schedule to assist with internal and external tracking and management of submittals.
 - Develop a mutually agreeable schedule for EPA review and comment on the draft FYR document.
 - Track review schedules, completions, and recommendations impacting remedy protectiveness through DoD Component data systems.
- EPA review comments should only address the protectiveness of the implemented remedy.
- Coordinate Congressional submittals to preclude incompatible reports.
- Continue working together.



Late Breaking Development

- EPA Federal Facility Cleanup Dialogue – October 2010
 - Stakeholders raise concerns regarding long-term management and Five-Year Reviews.
 - EPA proposes:
 - DoD, DOE, and EPA work together to develop an enhanced Five-Year Review process to promote uniformity and consistency and therefore contribute to long-term management monitoring and implementation.
 - New process will include consideration of budget and resources as they pertain to long-term operation and maintenance of the remedy.
- EPA issuing vapor intrusion and institutional control supplements to its Five-Year Review Guidance.
- More to follow – stay tuned!



Next Steps

- Work closely with EPA and DOE.
- Improve consistency and address significant issues with FYR policy updates in DERP Manual anticipated to be released in 2011.
- DoD's Five-Year Review Subcommittee will continue to meet to fully develop our DoD positions on the issues and ensure DoD is speaking with one voice in the meetings with EPA and DoD.
- Keep OSD leadership and the DoD Component Deputy Assistant Secretaries apprised of our activities.